IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1457 OF 1992

Vijaykumar R. Soni ....Petitioner

V/s.

Municipal Corporation for
Greater Bombay and another ....Respondents

Mr.J.P. Sen i/b Mehta & Girdharlal for the Petitioner.

Mrs.N.V. Sangalikar for Respondent Nos.1 and 2.

Mr.A.Sayyed, AGP for Respondent No.3.

Mr.A.Y. Sakhare, Senior Counsel i/b Varsha Palav for Respondent No.5.

WITH

WRIT PETITION NO.1459 OF 1992

Smt.Sitabai L. Talekar ....Petitioner

V/s.

Municipal Corporation for
Greater Bombay and another ....Respondents

Mr.Anand Grover i/b M/s.Haresh Mehta & Co. for the Petitioner.

Mr.N.V. Sangalikar for Respondent Nos.1 and 2.

Mr.A.Sayyed, AGP for Respondent No.3.

Mr.A.Y. Sakhare, Senior Counsel i/b Varsha Palav for Respondent No.5.

WITH

WRIT PETITION NO.1460 OF 1992

Smt.Sunanda N. More ....Petitioner

V/s.

Municipal Corporation for
Greater Bombay and another ....Respondents

Mr.Anand Grover i/b M/s.Haresh Mehta & Co. for the Petitioner.

Mrs.N.V. Sangalikar for Respondent Nos.1 and 2.

Mr.A.Sayyed, AGP for Respondent No.3.

Mr.A.Y. Sakhare, Senior Counsel i/b Varsha Palav for Respondent No.5.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 4TH FEBRUARY, 2005.

P.C. :

1. These Petitions involving common questions of fact and law can be conveniently disposed of by this common judgment. The Petitioners are seeking to challenge the notices issued by the Bombay Municipal Corporation under Sections 89 and 90 of the Maharashtra Regional and Town Planning Act, 1966, hereinafter for the sake of brevity the said Act, calling upon the Petitioners to hand over vacant possession of the premises as the Corporation intend

to demolish the structures. The Petitioners are also challenging the notices issued by the Corporation under Section 488 of the Act informing the Petitioners that the Ward Officer intend to demolish the structures by entering upon the premises.

2. The Petitioners are the tenants of the structures standing on final plot No.534 (old plot No.526) Bhavani Shankar Road, Dadar, Mumbai. The Petitioners in Writ Petition No.1459 of 1992 have been in occupation of the premises long prior to coming into force of the Town Planning Scheme IV whereas the Petitioner in Petition No.1457 of 1992 was inducted in 1971. In the said Town Planning Scheme final plot No.534 has been allotted to Respondent No.5.

3. The Corporation as planning authority declared its intention to make town planning scheme IV and the draft scheme was duly prepared and published on 3rd May, 1954 and the same was sanctioned by the State Government on 3rd January, 1955. On 14th March, 1955 Arbitrator was appointed under Section 29 of the Bombay Town Planning Act, 1915 and after carrying out the entire exercise as required under Sections 30 and 32 of the Bombay Town Planning Act, 1954 final scheme came into force from 15th August, 1963. Under the

Town Planning Scheme, original Plot No.526 was reconstituted to form final Plot No.528. However in the reconstruction a small triangular portion of the original Plot No.526 was joined to the final plot No.534. The structure occupied by the Petitioners falls in the said triangular portion of plot No.526 which was added/joined to the final plot No.534.

4. Now Note 28 of the Town Planning Scheme specifically provides that new regulations shall not apply to the buildings existing on the date of the commencement of the Final Scheme but shall apply when they are pulled down or a substantial portion of them are reconstructed. By Footnote 2 to the Scheme it was also provided that all rights of Lessors and Lessees in the original plots stood transferred to their corresponding final plots irrespective of change in areas except where specifically provided otherwise. Thus the tenancy in respect of the structures stood transferred to the final plot No.534 which is now owned by Respondent No.5. We may also mention that the Petitioner in Writ Petition No.1457 of 1992 was inducted long after the Scheme came into force and therefore his tenancy rights are in no way affected by the Scheme.

5. It appears that notices under Sections 89 and 90 were issued by the Corporation by erroneously presuming that the structures occupied by the Petitioners are non-confirming structures. The position is now clarified by R.M. Pagar, Sub Engineer (Town Planning) and paragraphs 9 and 11 of his affidavit which are relevant for our purpose read as under :-

> "9. With reference to para 2 of the Petition, I respectfully submit that the Notices u/s 89 & 90 of the M.R. & T.P. Act 1966 came to be issued to the Petitioner since Respondent No.5 had filed the Petition seeking directions against these Respondents for handing over vacant and peaceful possession of Final Plot No.534 of T.P. Scheme IV. I say that several representations were also made by Respondent No.5 to these Respondents for handing over vacant possession of the Final Plot. It was in the light of these facts that the Respondents gave notices to the Petitioner. However, it appears that through inadvertence the note at the foot of the "B" Form was not noticed and therefore, the structures occupied by the Petitioner were considered as contravening structures and notices came to be issued to the Petitioner along with others in the same building/locality. However, on re-examination of the scheme, it is noticed that the Respondent No.5 has paid an amount of Rs.16,900/- towards value of the structures and therefore, in respectful submissions of these Respondents the ownership, holding of the said structure is passed on to Final Plot No.534 and

> in turn to the allottee of Final Plot No.534. I deny that section 88, 89 and 90 of the M.R.T.P. act are violative and/or ultra vires the Constitution of India. I also deny that the Petitioner is entitled to challenge the validity of the said sections on the grounds mentioned in the various paras of the Petition.
>
> 11. With reference to para 5 of the Petition, the contents therein make it evident that Respondent No.5 has accepted the Petitioner as its tenant and the structure therefore cannot be said to be a contravening structure. These Respondents are therefore, not liable to remove/demolish the same or grant any alternative accommodation to the Petitioner."

6. Mrs.Sanglikar, learned counsel appearing for the Corporation fairly conceded that the notices under Sections 89 and 90 of the M.R.T.P. Act as well as Section 488 of the M.M.C. Act were issued without noticing the provisions of the scheme. In that view of the matter, the impugned notices are liable to be quashed and set-aside and are hereby quashed and set-aside.

7. Rule is made absolute accordingly.